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5-3-2017

# State v. Andreason Appellant's Brief Dckt. 44626

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44626
Plaintiff-Respondent,	)	
	)	CASSIA COUNTY NO. CR -2015-4020
v.	)	
	)	
ROBERT GAYLE ANDREASON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Robert Gayle Andreason pled guilty to sexual battery of a minor, the district court sentenced him to a unified term of fifteen years, with three years fixed. Mr. Andreason appeals from his judgment of conviction and challenges the length of his sentence.

Statement of Facts and Course of Proceedings

The police first investigated allegations of a relationship between Mr. Andreason and sixteen-year-old B.S. in December 2013. B.S.'s doctor called the police and reported that, during a checkup related to B.S.'s pregnancy, B.S. and her mother,

Sherry, told the doctor that the baby's father was forty-six years old. (PSI, p.43.) During the checkup of B.S.'s stepfather, John, that same day, John told the same doctor that he was upset because a family friend had gotten his daughter pregnant. (PSI, p.44.) He said his daughter had been approaching the family friend for a while, and maybe the friend finally "broke." (*Id.*) The doctor told B.S. and her family that he had to report what they told him, and then called the police. (*Id.*) The next day, however, B.S.'s family called the doctor and changed their story. (*Id.*) They said that B.S. was carrying her seventeen-year-old boyfriend's baby. (*Id.*)

Officer Horak then called and spoke to Sherry on the phone.<sup>1</sup> Officer Horak said he wanted B.S. to go in to the police station because they were concerned that "he is thirty years older than your daughter and she's only sixteen," to which Sherry responded that "we can't control love, you know that . . . they love each other and I, you know, I'm gonna find the papers for them to get married." (Def. Ex. A.) After they agreed on a date for an interview at the police station, Sherry added, "I just want all this stuff dropped . . . I want them to be married, they want to be married, and I'm going to sign the papers . . . ." (Def. Ex. A.)

At the police station a week and a half later, B.S. said that her seventeen-year-old boyfriend was the father of her baby, and the case was closed. (10/4/16 Tr., p.12, Ls.10–16; PSI, p.3.) B.S. gave birth to a baby girl in August 2014. (PSI, p.4.)

Mr. Andreason was in fact the father of that baby, but B.S. wouldn't confirm as much until July 2015 when B.S. made an appointment to meet with Officer Horak.

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<sup>1</sup> Mr. Andreason submitted a recording of that conversation at sentencing as Defense Exhibit A. Counsel was unable to view this audio file with running time indicators, and therefore has not included those in the citations to the exhibit.

(R., p.11.) She said that in May 2013, she spent the night with her friend A.A., who is Mr. Andreason's daughter. (*Id.*) B.S. and A.A. asked Mr. Andreason for Tylenol or Ibuprofen, but she thought Mr. Andreason in fact gave her oxycodone. (*Id.*) After taking the pill, she became drowsy. (*Id.*) Mr. Andreason then supposedly pulled her into his bedroom and raped her. (*Id.*) When B.S. woke up the next morning, she said Mr. Andreason made her take a shower and then drove her home. (R., p.12.) During the car ride, she claimed A.A. was listening to music with headphones on, so A.A. did not hear Mr. Andreason when he said he would kill B.S. if she told anyone. (*Id.*) B.S. went to Mr. Andreason's house four or five times a week for the next six months. (*Id.*) She said that every time she stayed the night, Mr. Andreason would give the girls mashed potatoes for dinner, she would get drowsy, and he would rape her. (*Id.*)

Mr. Andreason's account of what happened couldn't be more different. He acknowledged having sex with B.S., but denied that he forced her to have sex with him. (PSI, p.6.) The first time he and B.S. had sex in May 2013, he called and told her parents what had happened. (*Id.*) He wanted to marry B.S. and support his child, and he proposed to B.S. in the fall of 2013 with her parents' permission. (10/4/16 Tr., p.14, L.24–p.15, L.3; PSI, p.3.) He believed he and B.S. had a mutual loving relationship, albeit an inappropriate and illegal one.

To show Mr. Andreason was telling the truth, defense counsel submitted documentation of Mr. Andreason's relationship with B.S. and her family. He submitted photos of B.S. and Mr. Andreason when she was pregnant and another of her engagement ring; photos B.S. sent to Mr. Andreason of her sonograms and their baby; a photo of Mr. Andreason with their baby; and a photo of Mr. Andreason with B.S., their

baby, and B.S.'s entire family. (10/4/16 Tr., p.16, Ls.4–9; Exs.,<sup>2</sup> pp.22–29.) He also submitted screen shots of text messages sent between him and B.S., Sherry, and John after Mr. Andreason went to North Dakota to drive truck in the oilfields. (10/4/16 Tr., p.14, Ls.18–23; Exs., pp.30–80.) Those included messages from B.S. saying “love you” and calling Mr. Andreason “babe” (Exs., pp.46–49, 54, 62, 68–69, 78–79), messages between Mr. Andreason and Sherry coordinating money transfers and talking about the baby (Exs., pp.31–38), and one message in which Mr. Andreason said “I miss her and everyone,” to which Sherry responded “we miss you too” (Exs., p.34).

Mr. Andreason also submitted documentation to show that, in May 2013 when the alleged pattern of forcible rape began, Mr. Andreason would have been physically unable of doing the things that B.S. now claimed he did. (Exs., pp.1–10.) He had injured his ankle in an accident during work, and had surgery just over a week before. (10/4/16 Tr., p.12, Ls.17–21; Exs., p.1.) He was not able to put full weight on his leg, which was in a cast. (10/4/16 Tr., p.13, Ls.3–12; Exs., pp.6–7.) He also had surgery on his hand, and had a large staple protruding from it. (10/4/16 Tr., p.13, L.21–p.14, L.4; Exs., pp.8–10.) Because of these injuries, which happened during work, Mr. Andreason got a nearly \$19,000 settlement payment. (10/4/16 Tr., p.14, Ls.8–14; Exs., p.11.)

Finally, Mr. Andreason submitted receipts from multiple money transfers to B.S. and her family between July 2014 and August 2015, which totaled nearly \$30,000. (10/4/16 Tr., p.15, Ls.4–17; Exs., pp.12–19.) But, by July 2015, Mr. Andreason was on unemployment and was running out of money. (10/4/16 Tr., p.17, L.23–p.18, L.1.)

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<sup>2</sup> Citations to “Exs.” refer to the electronic document containing the exhibits Mr. Andreason submitted at sentencing.

Around the same time, B.S. and her family went to the police to report the alleged forcible rape. (10/4/16 Tr., p.17, L.21–p.18, L.1.)

Mr. Andreason pled guilty to sexual battery of a minor in July 2016. (R., pp.123–33; 7/26/16 Tr.) As part of that plea agreement, the State agreed to dismiss the other charges against Mr. Andreason and to recommend a unified sentence of fifteen years, with three years fixed. (R., pp.123–24.)

At sentencing, defense counsel provided the full background for this case, noting that the PSI based its recommendation for incarceration on the statements of B.S. and her family,<sup>3</sup> but that the facts belied their claims. (10/4/16 Tr., p.10, Ls.5–14.) That isn't to say that Mr. Andreason did not take responsibility for his actions—he acknowledged that he was the adult in this case, he made the mistake, and that was a crime. (10/4/16 Tr., p.15, Ls.15–22.) But, considering the full picture, Mr. Andreason asked the court either put him on probation or retain jurisdiction. (10/4/16 Tr., p.19, L.7–p.20, L.14.)

The State acknowledged that “there were other charges and circumstances,” but that, regardless, there was illegal sexual activity between Mr. Andreason and B.S.. (10/4/16 Tr., p.6, Ls.5–21.) Consistent with the plea agreement, it asked that the court impose a unified sentence of fifteen years, with three years fixed. (10/4/16 Tr., p.7, Ls.8–25.)

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<sup>3</sup> B.S.'s statement talked about the negative impact that this crime has had on her life, while Sherry's statement said that the crime had “infected our family fananical [sic] because of Robert Andreason doing what he done to my daughter,” “[m]e and my husband have finacialy [sic] supported [B.S. and her baby] since all this happened,” “I will never fore give [sic] Robert for getting my daughter a oxycodone for it could have killed her because she is allergic.” (PSI, p.5.) To say the least, Sherry's claims fly in the face of the evidence in this case, including Sherry's statements during her phone call with officer Horak and her text messages to Mr. Andreason.

The district court then discussed its sentence. It read B.S.'s victim impact statement, in which she said that she has problems controlling her emotions, is scared of Mr. Andreason, struggles financially, and has low self-esteem. (10/4/16 Tr., p.24, Ls.4–17.) The court acknowledged that Mr. Andreason disputed her version of events, but said “they are the statements from the victim, and they do demonstrate the highly intimate and the highly coercive and corrosive impact on a young person from sexual conduct that’s inappropriate.” (10/4/16 Tr., p.24, Ls.18–23.) The court went on to impose a unified sentence of fifteen years, with three years fixed. (10/4/16 Tr., p.28, Ls.10–14.) Mr. Andreason timely appealed. (R., pp.156–58.)

### ISSUE

Did the district court abuse its discretion when it sentenced Mr. Andreason to a unified term of fifteen years, with three years fixed, for sexual battery of a minor?

### ARGUMENT

#### The District Court Abused Its Discretion When It Sentenced Mr. Andreason To A Unified Term Of Fifteen Years, With Three Years Fixed, For Sexual Battery Of A Minor

When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the

primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834. Mr. Andreason’s sentence is excessive in light of the mitigating evidence in this case.

The background of this crime is the most notable mitigating factor. Although Mr. Andreason acknowledges that his relationship with B.S. was illegal and inappropriate, the overwhelming evidence shows that he and B.S. had a mutual loving relationship and that he did not drug and then forcibly rape her multiple times over the course of six months as she later claimed. (*See, supra*, pp.2–4.)

Mr. Andreason’s accountability and remorse also stands in mitigation. He told the PSI investigator, “I felt so awful about it afterward and wish I had not done that I can see my thinking problems now and wish I could undo what I did. I have so many times thought about that night and how stupid I was. There is no excuse or blame but my own. It is all my fault.” (PSI, p.6.) He “expressed feeling, ‘[a]wful, terrible, repentant, I realize now I am the very thing I had always despised, I realize the damage I have done to everyone.’” (PSI, p.7.) He also told the PSI investigator,

I wish I could have been stronger to resist and to be like others in the Bible. I despise what I now have become and labeled I can only think that I have hurt so many and the victim who now has to suffer for the rest of her life and who did not get to enjoy her youth. It is like a rock thrown into the pond I have had time to think of all those I have hurt and the damage to all. The ripples in the water go on and on eventually they are not as harsh but the damage is deep as now the spirit of others is damaged. I can only pray that God will help the spirit and souls heal and that I can help others not make the same mistakes I made that led up to my actions and misdeeds of crime. I am so sorry to all as God is my witness I am sorry.

(PSI, p.16.) Finally, at sentencing, Mr. Andreason told the court: “I know as the adult I know I had a choice to choose what was right and wrong. And due to my own stupidity,



or whatever you want to call it, I made the wrong choice. I'm sorry is all I can say.” (10/4/16 Tr., p.20, Ls.19–22.)

Relatedly, Mr. Andreason's prospects for rehabilitation mitigate his sentence. According to the PSI, Mr. Andreason has a low risk of reoffending (PSI, p.67), understands he would benefit from sex offender treatment (PSI, p.65), and was found by the psychosexual evaluator to be amenable to treatment (PSI, p.73).

Mr. Andreason's difficult childhood is another mitigating factor. Between the ages of five and seven, Mr. Andreason's biological mother and her boyfriend sexually abused him. (PSI, pp.7, 63.) After he was adopted when he was seven, his adoptive parents abused him emotionally and physically, using wooden boards, razor straps, belts, willow branches, and garden shovels. (PSI, pp.7, 56.) He suffered that abuse until he was a teenager, but managed to “bury [himself] in work and school to keep from getting beaten.” (PSI, p.7.) He was in swing choir, learned to drive and repair different types of vehicles, and graduated from high school with more credits than he needed. (*Id.*) After high school, he went on a church mission and then met his first wife. (*Id.*)

Despite the abuse that marked his early years, Mr. Andreason has largely led a productive and law-abiding life. He developed skills related to trucking, operating heavy equipment, and mechanics, and has a fairly steady work history. (PSI, pp.11–13, 57.) He has only one other criminal conviction for grand theft, for which he successfully completed a term of probation. (PSI, pp.7, 18.) He has no history of mental health problems or substance abuse. (PSI, p.18.) Before he was incarcerated for this crime, he attended church and had a long list of hobbies, including building different types of vehicles, fishing, mountain biking, ghost town hunting, and playing sports. (PSI, p.9.)

Going forward, Mr. Andreason wants to become a productive member of society, get a job, get involved in community activities when he can, save for retirement, enjoy life with his family and friends, and try not be a workaholic anymore. (PSI, p.15.) He also plans to reestablish boundaries, spend time with people his own age, attend church, and become involved in sports and other positive activities. (*Id.*)

Considering these mitigating factors, including the circumstances that Mr. Andreason brought to light at sentencing, the district court abused its discretion by sentencing Mr. Andreason to fifteen years, with three years fixed.

#### CONCLUSION

Mr. Andreason respectfully requests that this Court reduce his sentence to ten years, with two years fixed, and either place him on probation or retain jurisdiction.

DATED this 3<sup>rd</sup> day of May, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
MAYA P. WALDRON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of May, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ROBERT GAYLE ANDREASON  
INMATE #74532  
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MICHAEL R CRABTREE  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

DENNIS R BYINGTON  
MINI-CASSIA PUBLIC DEFENDER OFFICE  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

MPW/eas